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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of:		**Docket No.:**	**4270-137**
Applicants:	**HOBBS, Steven E., et al.**	**Conf. No.:**	**4654**
Application No.:	**10/649,073**	**Art Unit:**	**1743**
Date Filed:	**August 26, 2003**	**Examiner:**	**Natalia A. Levkovich**
Title:	**GASKETLESS MICROFLUIDIC DEVICE INTERFACE**	**Customer No.:**	**32763**

FACSIMILE TRANSMISSION CERTIFICATE
ATTN: Examiner Natalia A. Levkovich
Fax No. (571) 273-8300

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Number of Pages (including cover)

Karin Szypszak

August 30, 2006
Date

RESPONSE TO AUGUST 3, 2006 OFFICE ACTION IN U.S. PATENT APPLICATION NO. 10/649,073

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This responds to the August 3, 2006 Office Action in the above-identified application.

A. Restriction Requirement

In the August 3, 2006 Office Action, the Examiner imposed a restriction against claims 1-31, as between:

Group I. Claims 1-21 and 26-30, drawn to a microfluidic assembly, classified in class 422, subclass 102;

Group II. Claims 22-25, drawn to a method of assembling a microfluidic apparatus, classified in class 156, subclass 349; and

Group III. Claim 31, drawn to a method of making a fluidic seal, classified in class 264, subclass 138.

In response to the restriction requirement, Applicants hereby elect **Group I, claims 1-21 and 26-30**.

Such election is **with traverse as to the restriction between Groups I and II**. Applicants concede that Group III is properly restricted from Group II.

The August 3, 2006 Office Action at page 2 thereof bases the restriction requirement as between Group I and Group II solely on alleged *distinctness* of the subject matter of Group I and Group II claims, and thereby ignores the statutory criteria for restriction in 35 USC 121, which requires that:

> **"[I]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions."**

The statute therefore requires as a basis for legally permissible restriction that the subject matter of respective claims be BOTH independent *and* distinct. Neither criterion alone is sufficient. Both must be present in order for the restriction requirement to be proper under the statute.

The examiner's attention is directed in this respect to the provisions of MPEP Section 802.01 (Meaning of "Independent" and "Distinct"), which states, *inter alia*:

> **"The term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect..."**

It is apparent from this provision of the MPEP that the subject matter of the Group I and Group II claims is not "independent" within the meaning of 35 USC 121, particularly where as here the examiner has expressly acknowledged that the respective Groups "**are related**" (August 3, 2006 Office Action, page 2, noting that "Inventions [II] and I **are related** as process of making and product made" (emphasis added)), and that therefore Groups I and II are NOT properly restricted.

Further, it is pointed out that the subject matter of the respective claims imposes no serious burden of searching (i.e., under MPEP 808.02) on the examiner, particularly Group II contains only 4 claims. It is incumbent on the examiner to "explain why there would be a serious burden on the examiner if restriction is not required." MPEP 808.02.

According to the MPEP section 803:

> **"[I]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP § 803.**

Under the applicable criterion of this MPEP provision, the examiner is required to submit all of the Group I and Group II claims (i.e., claims 1-25) to examination on the merits.

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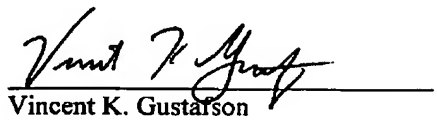
CONCLUSION

Substantive examination of claims 1-25 is hereby requested.

Respectfully submitted,



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